



Managing Performance Under Chapter 75

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Overview

- **Effect of 2009 National Defense Authorization Act (NDAA) Repeal of NSPS**
- **Managing Performance Deficiencies**
- **Chapter 75 Procedural Requirements**

Impact of NDAA 2009

- **Actions on NSPS employees must be taken under 5 U.S.C. chapter 75 until they transition out**
- **Actions after transition to the General Schedule may be taken under 5 U.S.C. chapters 75 or 43**
- **Appeals continue to be processed through the Merit Systems Protection Board**

Managing Performance

- **Communicate performance expectations**
- **Observe and document performance**
- **Provide on-going feedback**
- **Evaluate performance**
- **Address performance that does not meet expectations**

Origins of Poor Performers

- **Employee came as a poor performer**
- **Employee developed a poor attitude or work habits**
- **Employee and job are not compatible**
- **Employee has health problems**
- **Employee's position or job assignment has changed**

Performance Interventions

- **Give supervisory feedback**
- **Provide remedial training**
- **Change work assignment**
- **Assign mentor or advisor**
- **Provide improvement period**
- **Take appropriate action**

Performance Actions

Types of Actions and Penalty Selection

- **Not Capable of Performing**
(e.g. failure to perform accurate engineering analysis)
 - Remedial Actions: coaching, letter of counseling, training, mentoring, improvement period, reassignment
 - Adverse Actions: change to lower pay band, removal (logically involves movement out of the position)
- **Willful or Negligent Non-performance or Failure to Perform**
(e.g. failure to work harmoniously with customers)
 - Remedial Actions: verbal warning, letter of counseling, oral admonishment.
 - Adverse Actions: Written reprimand, suspension to removal (full range of penalties open and may be effective)

System Element Comparison

System Element	Chapter 43	Chapter 75
Types of Actions	Demotion or Removal	Suspension, Demotion, or Removal
Actions Taken For	Unacceptable performance	"such cause as will promote the efficiency of the service"
Proof	Substantial evidence	Preponderance of the evidence

System Element Comparison

System Element	Chapter 43	Chapter 75
Actions Based On	Actions can only be based on an employee's formal, established, communicated standards	Actions can be based on expectations or established/formal standards
Improvement Period	Required	Optional

System Element Comparison

System Element	Chapter 43	Chapter 75
Time Limits	Limited to performance "deficiencies" occurring within the 1 year prior to proposal notice	No time limit
Mitigation	Action may not be mitigated (action will either be sustained or reversed)	Action may be mitigated (penalty reduced)

Chapter 75 Requirements

Notice of Proposed Action



Employee's answer to notice



Right to representation



Decision issued



Notice of right to appeal

Chapter 75 Considerations

- **Standard for Action (efficiency of the service)**
- **Burden of Proof (preponderance of the evidence)**
- **No statutory right to a performance improvement period**

Chapter 75 Considerations

- Mitigation
 - Reasonableness of the Penalty
 - Douglas Factors
 - Agency Table of Penalties
 - Progressive Discipline

Chapter 75 Considerations

- Special Circumstances
 - Non-disciplinary Adverse Actions
 - Employee Assistance Program
 - Reasonable Accommodation

QUESTIONS

